ATTORNEY DOCKET: KCX-731 (19567)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Re: Appeal to the Board of Patent Appeals and Interferences

In re Application MICHAEL D. O'SHEA	)	Examiner: J. MYHRE
Serial No.: 10/748,763	)	Art Unit: 3622
Confirmation No.: 2711	)	Deposit Account: 04-1403
Filed: DECEMBER 30, 2003	)	Customer No.: 22827

Title: RF-BASED ELECTRONIC SYSTEM AND METHOD FOR AUTOMATIC CROSS-MARKETING PROMOTIONS OFFERS AND CHECK-OUTS

1. ☐ **NOTICE OF APPEAL**: Pursuant to 37 CFR 41.31, Applicant hereby appeals to the Board of Appeals from the decision dated _____ of the Examiner twice/finally rejecting claims _____.

2. ☒ **BRIEF** on appeal in this application pursuant to 37 CFR 41.37 is transmitted herewith (1 copy).

3. ☐ An **ORAL HEARING** is respectfully requested under 37 CFR 41.47 (due within two months after Examiner's Answer).

4. ☐ Reply Brief under 37 CFR 41.41(b) is transmitted herewith (1 copy).

5. ☐ "Small entity" verified statement filed: [ ] herewith [ ] previously.

6. **FEE CALCULATION:**

	Fees
If box 1 above is X'd enter $ 540.00	$ 0.00
If box 2 above is X'd enter $ 540.00	$ 540.00
If box 3 above is X'd enter $1,080.00	$ 0.00
If box 4 above is X-d enter –0- (no fee)	$ 0.00

PETITION is hereby made to extend the original due date of _____, hereby made for an extension to cover the date this response is filed for which the requisite fee is enclosed (1 month $130; 2 months $490; 3 months $1,110; 4 months $1,730, 5 months $2,350 $ 0.00

SUBTOTAL: $ 540.00

Less any previous extension fee paid since above original due date. - $ 0.00

Less any previous fee paid for prior Notice of Appeal since Board did not render a decision on the merits. MPEP § 1204.01 - $ 0.00

Less any previous fee paid for submitting Brief on prior Appeal since Board did not render a decision on the merits. MPEP § 1204.01 - $ 0.00

SUBTOTAL:		$ 540.00
If "small entity" verified statement filed ☐ previously, ☐ herewith, enter one-half (½) of subtotal and subtract	-	$ 0.00
TOTAL FEE ENCLOSED:		$ 540.00

☐ Fee enclosed.

☐ Charge fee to our Deposit Account/Order Nos. in the heading hereof (for which purpose one additional copy of this sheet is attached)

☒ Charge to credit card (attach Credit Card Payment Form – PTO 2038)

☐ Fee NOT required since paid in prior appeal in which the Board of Appeals did not render a decision on the merits.

The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any fees in addition to the fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (deficiency only) now or hereafter relative to this application and the resulting official document under Rule 20, or credit any overpayment, to our Account No. shown in the heading hereof. This statement does not authorize charge of the issue fee in this case.

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Date: Nov 13, 2008

ATTORNEY FILE.: KCX-731 (19567)

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APPELLANT'S ORIGINAL APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR § 41.37 for the subject application, Appellant hereby submits its original appeal brief to the Examiner's Final Action mailed May 16, 2008.

1. REAL PARTY IN INTEREST:

The real party in interest is Kimberly-Clark Worldwide, Inc., the assignee of the applicants' entire right title and interest.

2. RELATED APPEALS AND INTERFERENCES:

N/A

3. STATUS OF CLAIMS:

Claims 1-19 and 21-27 are pending. Claims 20 and 28-39 have been cancelled. Appellant appeals the rejections of claims 1-19 and 21-27, which are under final rejection mailed on May 16, 2008.

4. STATUS OF AMENDMENTS:

The one amendment submitted after the final rejection from which this appeal is taken was admitted per the advisory action mailed on September 2, 2008.

5. SUMMARY OF CLAIMED SUBJECT MATTER:

Page and line numbers are references to Appellant's patent application.

Independent claim 1

As schematically shown in FIG. 1 and explained at page 13, lines 3 – 5, there is a system 10 for providing cross-marketing promotional offers to a customer.

As shown in FIGs. 1 and 2 and explained at page 15, lines 4 – 5, an embodiment of the system 10 can include at least one product inventory location 38 for holding distinct products 70 and displaying said distinct products 70 to customers.

As shown in FIG. 2 and explained at page 19, line 29 through page 21, line 2, at least one said distinct product 70 is associated with at least one electronic tag 72, and wherein said at least one electronic tag 72 is configured to convey product information.

As shown in FIGs. 1 and 2 and explained at page 8, lines 20 – 22; page 15, lines 24 – 30 and page 16, lines 26 – 30, the system 10 can include a smart cart 61 defining a customer-storage area 67 used by a customer to store products while shopping.

As shown in FIGs. 1 and 2 and explained at page 8, lines 24 – 29; page 13, lines 14 – 25; page 14, lines 4 – 5; page 20, lines 1 – 5 and page 21, lines 3 – 11, the system 10 can include at least one electronic tag reading device 30 configured to retrieve information from the at least one electronic tag 72.

As shown in FIGs. 1 and 2 and explained at page 15, lines 24 – 31; page 16, lines 10 – 25; page 16, line 31 through page 17, line 12 and page 21, lines 3 – 11, the system 10 can include an electronic computing device 62 in communication with the at least one electronic tag reading device 30 and configured to accept, process, store and output the product information.

As explained at page 17, lines 2 – 12 and page 16, lines 26 – 30, the electronic computing device 62 can be further configured to (a) use the at least one electronic tag reading device 30 to retrieve product information from an electronic tag 72 associated with a hot-product 69a, 69b wherein the hot-product is at least one of (i) a product being examined by a customer 69b; and (ii) a product 69a in a customer-storage-area 67.

As shown in FIGs. 1 and 2 and explained at page 8, lines 3 – 17; page 8, line 20 through page 9, line 15; page 9, line 26 through page 10, line 17 and page 16, line 31 through page 17, line 22, the electronic computing device 62 can be further configured to (b) use the product information to determine if a cross-marketing promotional offer is associated with the hot-product 69a, 69b.

As shown in FIGs. 1 and 2 and explained at page 15, lines 24 – 31; page 16, lines 10 – 25 and page 16, line 31 through page 17, line 22, the electronic computing device 62 can be further configured to (c) to notify the customer of a cross-marketing promotional offer determined to be associated with the hot-product 69a, 69b; and wherein the promotional offer is one of a real time promotional offer and a near real time promotional offer.

As shown in FIGs. 1 and 2 and explained at page 7, lines 25 – 26; page 8, lines 20 – 24; page 10, line 23 through page 11, line 1; page 11, lines 10 – 12; page 15, line 24 through page 16, line 9 and page 17, line 23 through page 18, line 5, the smart cart 61 can further comprise an item evaluator 63 configured to measure a physical parameter of the hot-product 69a placed in the customer-storage area 67 and to cross reference the measured physical parameter with the product information to verify that the actual hot-product 69a corresponds to the product referenced in the product information.

Independent claim 11

As shown in FIGs. 1 and 2 and explained at page 8, lines 18 – 20; page 15, lines 24 – 25 and page 16, lines 26 – 28, there is a smart cart 61.

As shown in FIGs. 1 and 2 and explained at page 8, lines 20 – 22; page 15, lines 24 – 30 and page 16, lines 26 – 30, the smart cart 61 can include a customer-storage-area 67 defined in the smart-cart 61 and used by a customer to store products while shopping, wherein the customer-storage-area 67 comprises an item-evaluator 63.

As shown in FIGs. 1 and 2 and explained at page 8, lines 24 – 29; page 13, lines 14 – 25; page 14, lines 4 – 5; page 15, lines 4 – 11; page 16, lines 10 – 15 and 24 – 25; page 20, lines 1 – 2 and page 21, lines 3 - 11, the smart cart 61 can include at least one electronic tag reading device 30 configured to retrieve product information from electronic tags 72 associated with products 70.

As shown in FIGs. 1 and 2 and explained at page 15, lines 24 – 31; page 16, line 10 through page 17, line 12, the smart cart 61 can include a smart cart computer 62 in communication with the at least one electronic tag reading device 30 and configured to retrieve product information from at least one electronic tag 72 associated with a hot-product 69a, 69b wherein the hot-product is at least one of: (a) a product 69b being examined by a customer; or (b) a product 69a in said customer-storage-area.

As shown in FIGs. 1 and 2 and explained at page 15, lines 24 – 31, the smart cart computer 62 is in communication with the item-evaluator 63.

As shown in FIGs. 1 and 2 and explained at page 7, lines 25 – 26; page 8, lines 20 – 32; page 10, line 23 through page 11, line 1; page 11, lines 10 – 12; page 15, line 24 through page 16, line 9 and page 16, line 26 through page 18, line 5, the smart cart computer 62 is further configured to use the item-evaluator 63 to measure a physical parameter of the hot-product 69a placed in the customer-storage area 67 and to

compare the measured physical parameter with a known value to verify that the hot-product 69a corresponds to the product identified in the product information.

As shown in FIGs. 1 and 2 and explained at page 7, lines 25 – 26; page 8, line 30 through page 9, line 4; page 16, line 31 through page 17, line 6, the smart cart computer 62 is further configured to communicate with a remote computer (20, 12, 58, 25) and retrieve supplemental-product-information associated with the hot-product 69a using at least part of the product information.

As shown in FIGs. 1 and 2 and explained at page 8, lines 3 – 17; page 9, line 16 through page 10, line 17 and page 17, lines 10 – 22, the smart cart computer 62 is further configured to present to the customer at least one member from the group consisting of: (a) at least part of the product information; (b) at least part of the supplemental-product-information; or (c) measured hot-product physical parameter information.

Independent claim 18

As shown in FIGs. 1 and 2 and explained at page 8, lines 18 – 20; page 15, lines 24 – 25 and page 16, lines 26 – 28, there is a network enabled smart cart 61.

As shown in FIGs. 1 and 2 and explained at page 8, lines 20 – 22; page 15, lines 24 – 30 and page 16, lines 26 – 30, the smart cart 61 can include a customer storage area 67 defined in the smart cart 61 comprising a scale 63 configured in the customer storage area 67.

As shown in FIGs. 1 and 2 and explained at page 15, 24 – 26, the smart cart 61 can include a customer interface 62.

As shown in FIGs. 1 and 2 and explained at page 8, lines 24 – 29; page 13, lines 14 – 25; page 14, lines 4 – 5; page 15, lines 4 – 11 and 24 – 30; page 16, lines 10 – 15 and line 24 through page 17, line 12 and page 21, lines 3 – 11, the smart cart 61 can include at least one electronic tag scanning device 30 associated with the customer interface 62 and configured to receive electronic tag transmissions from electronic tags 72 associated with hot-products 69a, 69b.

As shown in FIGs. 1 and 2 and explained at page 16, lines 10 – 25, the smart cart 61 can include a first computer 20 associated with the customer interface 62.

As shown in FIGs. 1 and 2 and explained at page 15, lines 24 – 31; page 16, line 10 through page 17, line 12, the first computer 62 is in communication with said at least one electronic tag scanning device 30 and configured to retrieve product information stored in the electronic tags 72 associated with the hot-products 69a, 69b;

As shown in FIG. 1 and explained at page 14, lines 4 – 23, the smart cart 61 can include a first network operating in accordance with a predetermined protocol.

As shown in FIG. 1 and explained at page 14, lines 23 – 24 and page 16, lines 10 – 15 and 24 – 25, the smart cart 61 can include a second network comprising a plurality of the customer interfaces 62.

As shown in FIG. 1 and explained at page 13, lines 26 – 32 and page 14, lines 21 – 25, the smart cart 61 can include a gateway 52 operatively coupled to the first network and to the second network.

As shown in FIG. 1 and explained at page 14, lines 12 – 20 and 24 – 31 and page 16, lines 10 – 15 and 24 – 25, the smart cart 61 can include an HTTP server embedded in one of the gateway 52 and the plurality of customer interfaces 62.

As shown in FIGs. 1 and 2 and explained at page 16, line 31 through page 17, line 12 and page 19, lines 3 – 28, the first computer 20 is configured to establish a communication connection to a third party computer 25 so that a customer can directly communicate with a third party via the customer interface 62.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL:

The final rejection of claims 1-9 and 11-13 under 35 U.S.C. 103(a) as being unpatentable over Sloane (USP 5,918,211).

The final rejection of claims 10, 14-19 and 21-27 under 35 U.S.C. 103(a) as being unpatentable over Sloane in view of Humble (GB 2,193,000).

7. ARGUMENT:

A. Claims 1-9 and 11-13 are patentable under 35 U.S.C. § 103(a) over Sloane.

Appellant's independent claim 1 calls for a system for providing cross-marketing promotional offers to a customer. Claim 1 requires a smart cart that defines a customer-storage area used by the customer to store products while shopping. Claim 1 further calls for the smart cart to further comprise an item evaluator configured to measure a physical parameter of the products placed in the customer storage area. As explained at lines 1 – 4 on page 16 of appellant's specification, by "physical parameter" is meant an objective physical attribute such as the product's weight. This physical parameter is cross-referenced with the product information to verify that the actual product corresponds to the product referenced in the product information.

Independent claim 11 is drawn to the individual smart carts and requires a

customer storage area that is defined in the cart and is used by the customer to store products while shopping. The smart cart includes a smart cart computer and an item evaluator. The smart cart computer is configured to use the item evaluator to measure a physical parameter of the products placed in the customer storage area and to compare the measured physical parameters with a known value to verify that the products placed into the cart correspond to the products identified in the product information.

The method and apparatus according to Sloane is focused primarily on the use of a portable bar code scanner used by a customer to scan products as the customer shops. The bar code scanner may be held by the customer, or attached to a shopping cart, and is used to retrieve a bar code provided on a product. The scanner operates in conjunction with a computer/controller 12, and the bar code may be used for, among other things, to provide the customer with an indication that a promotion is provided for the product. The computer/controller also sends a product description and price information on the scanned product to the bar code scanner.

Sloane does not describe or otherwise suggest a smart cart that includes an item evaluator that measures a physical parameter of products placed in the cart, whereby the physical parameter is cross-referenced with product information to verify that the scanned product actually corresponds to the product referenced in the product information. Accordingly, claim 1 cannot be rendered unpatentable by Sloane. It is respectfully submitted that independent claim 11 patentably distinguishes over Sloane for essentially the same reason as claim 1.

Claims 2 through 9 only further patentably distinguish the system of claim 1, and

claims 12 and 13 further patentably distinguish the smart cart of claim 11. Accordingly, claims 2 through 9, 12 and 13 are allowable over Sloane for at least the reasons that each of claim 1 and claim 11 is respectively allowable.

Attempting to overcome the above-noted deficiency in the rejection of claims 1 – 9 and 11 – 13, lines 1-9 of paragraph 6a on page 11 of the May 2008 Final Office Action contended that Sloane discloses "an item evaluator configured to measure a physical parameter of the products placed in the customer storage area" which is "cross-referenced with the product information to verify that the actual product corresponds to the product referenced in the product information" because (emphasis added):

> Sloane explicitly discloses a **video camera** as a security device that take (sic) a **video image (i.e., a physical parameter**) of the product being placed into the cart and compares it with stored image information about the scanned product to prevent fraud.

Thus, the issue of patentability turns on claim interpretation, namely, whether an **item evaluator** is satisfied by Sloane's video camera and whether "to measure a physical parameter" can be satisfied by the mere transmission of a video representation on a video screen as is done in Sloane. Appellant respectfully submits that these would be improper interpretations of this language in appellant's claims 1 and 11.

Initially, appellant raises the telling fact that the May 2008 Final Action never even purports to consult appellant's specification before arriving at the conclusion of the May 2008 Final Action that Sloane's video camera satisfies the interpretation of an **item evaluator** and Sloane's mere transmission of a video representation on a video screen falls within the proper interpretation of "to measure a physical parameter" as required by appellant's claims 1 and 11. Had the May 2008 Final Action examined appellant's

specification, it would have become apparent that the May 2008 Final Action's interpretations were not supportable.

Per page 8, lines 22 – 24; page 15, lines 28 – 30 and FIGs. 1 and 2 of appellant's specification, the **item evaluator** is part of the smart cart 61 and in particular a scale 63 that forms the bottom of the customer-storage-area 67. As explained at page 9, lines 20 – 25 of appellant's specification (emphasis added):

> With such a configuration, the smart cart computer **can obtain a total-measured-weight of the product or products on the smart-cart-scale** and compare such total-measured-weight to the expected-total-weight. If the measured-weight is within a predefined weight-tolerance of the expected-weight, there is an increased confidence that all products on the smart-cart scale are associated with operable and correctly programmed electronic tags.

As explained at page 15, lines 24 – 31 of appellant's specification (emphasis added):

> Still referring to Fig. 1, a block diagram representation of an exemplary smart cart 61 is depicted. Smart cart 61 may comprise a customer-interface 62 and a **smart-cart-scale 63**. Smart cart 61 is a device a customer would use while shopping to store and transport the products the customer anticipates purchasing. Exemplary smart cart 61 provides a customer-storage-area 67 (Fig. 2) where the bottom of such customer-storage-area 67 comprises **an item evaluator, such as smart-cart-scale 63**. Smart-cart-scale 63 is in communication with customer-interface 62 via wired or wireless communication link 65.

Thus, per appellant's specification, the only disclosed **item evaluator** is a **scale** 63 that is part of the customer-storage-area 67 of the smart cart 61.

What is meant by an **item evaluator** is explained at page 16, lines 1 – 9 of appellant's specification (emphasis added):

> Smart-cart-scale 63 is one possible embodiment of an item-evaluator. An **item-evaluator** is an electronic device associated with customer-storage area 67 and **designed to measure a physical parameter, such as weight**, of hot-products in customer-storage area 67. The **general purpose of such an item-evaluator** is to provide a means for **cross referencing the electronic tag data retrieved from hot products**. Such cross referencing provides added confidence that all **items are associated with proper electronic tag**, that such **electronic tags are working properly** and that such **electronic tags have been programmed properly** and/or that the **supplemental-product-information associated with hot-products is accurate**.

The part that must be played by the **item evaluator** in the example of the smart cart scale 63 is further explained at page 17, line 23 through page 18, line 5 of appellant's specification (emphasis added):

> Ideally, the smart cart computer associated with customer-interface 62 is in wired or wireless communication with **smart-cart-scale 63**. Suitable wireless communications technologies are well known in the art, examples of which include Wi-Fi (wireless fidelity) and Bluetooth. With such a configuration, the smart cart computer can obtain a **total-measured-weight of the product or products on the smart-cart-scale and compare such total-measured-weight to the expected-total-weight**. The smart cart computer would determine the expected-total-weight using product information or supplemental-product-information retrieved from smart tags 72 or a remote computer respectively. If the total-measured-weight is within a predefined weight-tolerance of the expected-total-weight, there is an increased confidence that all products on the smart-cart scale are associated with operable electronic tags. Conversely, when a product added to the customer-storage-area results in a total-measured-weight that is not within such predefined weight-tolerance of the expected-total-weight, customer-interface 62 may

issue an alert to the customer.

Thus, per appellant's specification, an **item evaluator** must **measure** a **physical parameter** of the product. Sloane's video camera does not **measure** anything about the product. Appellant respectfully submits that the assumption that a **two-dimensional video image** of a three-dimensional product constitutes a **measurement** of a **physical parameter** of that product is clearly erroneous in the context of the requirements imposed by appellant's specification. The video image generated by the Sloane system cannot be used by the Sloane system as a basis of comparison with information stored in the Sloane system. The Sloane system does not purport to use video recognition capability such that some stored images can be compared to video images being taken by the Sloane camera and used to determine what item is placed into the cart. Instead, the images being taken by the Sloane camera are provided to human viewers who are monitoring the images for evidence of theft.

Appellant's specification gives the **product's weight** as an example of a product's **physical parameter**. Thus, a physical parameter must be an objectively immutable attribute such as the product's weight, which is fixed and not subject to distortion. An image is merely a representation of a particular view of a product rather than a physical parameter of that product. An image on a two-dimensional video screen is subject to distortion, depends on the orientation of the camera with respect to the object being viewed, the lens setting, and is subject to a particular scale (the scale itself being unknowable in advance because it is dependent on numerous changing factors in the Sloane environment) as well as the use of perspective to fool the eye into observing a two-dimensional image and believing that such image has three-dimensional depth. A

physical parameter of the product by contrast is not subject to such distortion.

Moreover, the scale satisfies the **item evaluator** requirement of taking a **measurement** that can be used for cross-referencing with the electronic tag data. The scale can provide such cross-referencing means of evaluating the product by measuring the product's weight, an immutable attribute of the product. However, Sloane's video camera does not provide a means for cross-referencing any **measurement** with the electronic tag data retrieved from hot products. Plainly, Sloane's video camera cannot distinguish between a 10 ounce box of Kellogg's® corn flakes and a 14 ounce box of Kellogg's® corn flakes.

Appellant therefore respectfully submits that claims 1-9 and 11-13 are patentable under 35 U.S.C. § 103(a) over Sloane.

B. Claims 10, 14-19 and 21-27 are patentable under 35 U.S.C. § 103(a) over Sloane in view of Humble.

Independent claim 18 is drawn to a network enabled smart cart and calls for a customer storage area defined in the smart cart and includes a scale. In other words, the scale is a component of the cart, as a scale is in claims 10 and 14 – 17. Claim 18 also requires a customer interface and a first computer associated with the customer interface and configured to establish a communication connection to a third party computer so that a customer can directly communicate with a third party via the customer interface.

The Humble reference describes a check-out system that incorporates two different **floor-installed** weighing scales 16, 20 used at the check-out location. The shopping cart is placed on the first **floor-installed** so-called "in cart" scale 16 and as an

article is taken from the shopping cart, the system makes an immediate determination of the decrement in weight associated with the removal of the article. Upon scanning the article UPC code and obtaining a known weight from the computer 24, the system compares the decremented weight with the computer provided weight to determine any discrepancy between the compared weights. A second level comparison is done with the **floor-installed** so-called "out cart" scale 20. As the individual removed articles are transferred after scanning to the second cart 22, a second comparison can be made between **floor-installed** scale 16 and the scanned UPC weights.

The Humble reference does not teach or disclose an **item evaluator** such as a scale or other device that is configured **in the shopping cart**. The **floor-installed** scales in the Humble reference are provided at the check-out station, and the cart must be moved onto the scale rather than provisions being made so that the scale can be carried by the cart.

Attempting to overcome the above-noted deficiencies of the Sloane and Humble combination concerning the absence of an **item evaluator** in the form of a **scale in the shopping cart** rather than floor-installed at a point-of-sale terminal as in Humble, lines 1-11 of paragraph 6c on page 12 of the May 2008 Final Office Action asserted as follows (emphasis added):

> The Examiner notes that Humble discloses the use of weight to verify a product's identity had been used for years. Humble also discloses comparing the weight of each individual product being placed into bagging shopping cart at the point-of-sale terminal to insure the correct product was being bagged. This, **combined with Sloane's disclosure of measuring using the product parameters (image)** to verify the correct product was being placed into the shopping cart while shopping would have rendered it obvious to one

> having ordinary skill in art **to also use the scale** to verify the item being placed in the shopping cart **while the customer was shopping**.

The first problem with the above assertion of the May 2008 Final Office Action is again erroneously attributing to Sloane any disclosure of **measuring** any **physical product parameter** under the assumption that an image is such a physical parameter of the product and that substituting the Humble's fixed floor scale for Sloane's portable video camera is merely the substitution of one **item evaluator** device for another. Plainly, substituting the Humble's fixed floor scale for Sloane's portable video camera is not substituting one physical measuring device for another, as Sloane's portable video camera does not satisfy an **item evaluator** as properly interpreted in appellant's claims.

Additionally, having a **floor-installed** scale at a point-of-sale terminal, after the customer already has put a product into the cart and carried it all around the store before checkout is manifestly substantially different than the smart cart described by appellant's claim 18. Moreover, given the substantial advantages and greater convenience of appellant's smart cart, the failure to find any suggestion in either Sloane or Humble speaks to the nonobviousness of appellant's claim 18.

Moreover, appellant's claim 18 requires (emphasis added):

> wherein said first computer is configured to establish a communication connection **to a third party computer** so that a customer can **directly communicate with a third party** via said customer interface.

Regarding this aspect of appellant's claim 18, lines 5 – 8 of paragraph 6b on page 11 of the May 2008 Final Office Action state (emphasis added):

> Sloane allows the customer to connect through the Internet

> **to retrieve and save coupons** and product information. This product information/coupons can then be retrieved while the customer is shopping. It is implied that the appropriate connection are made.

However, as explained at appellant's specification at page 19, lines 3 – 13, claim 18 requires "establishing a communication connection with **a third party computer so that a customer can directly communicate with a third party** via the customer interface." As is clear from the example given of this type of communication at page 19, lines 14 – 28, it is more than just read-only access. The communication connection with a third party computer is so that the customer inside the store can directly communicate with a third party. A proper interpretation according to appellant's specification means that the third party must be able to initiate the communication to the customer inside the store. Sloane does not allow another human being, the third party, to initiate communication directly with the customer via the customer interface. Sloane is just providing access to a static coupon database and allowing files to be downloaded from that database.

As described in the appellant's specification at, for example, page 19, a **remote** communication can be established, for example, using an IP address associated with a **remote** third-party computer 25, and a customer in the retail store using the smart cart can use the customer interface 62 to establish this communication link with a third party computer 25 that is monitored by a person **outside of the retail store**. The person **outside of the store** can directly initiate communication with the person inside the store via the customer interface 62 for any reason, for example to add an item to the customer's shopping list, and so forth. This capability is completely lacking from the

system of Sloane, which merely provides read-only access to coupon servers outside the store. The May 2008 Final Office Action has again in this instance failed to properly interpret language of appellant's claims – in this case "a third party computer **so that a customer can directly communicate with a third party** via the customer interface."

Moreover, voice and text telecommunication (appellant's claim 18) on the one hand and data telecommunication (Sloane) on the other hand being two different animals, Sloane's allowance of the customer to download information from another computer (data communication), rather than communicate with a third party individual person (voice and text telecommunication), fails to disclose the properly interpreted feature required by appellant's claim 18.

The rejection of claim 18 in the May 2008 Final Action apparently was based alternatively on the premise that the store central computer disclosed in Sloane corresponds to the "third party computer" required by claim 18. Lines 8 – 12 of paragraph 6b on page 11 of the May 2008 Final Office Action state (emphasis added):

> Furthermore, since Sloane explicitly discloses that the consumer interface is in radio frequency communication with **the store computer and/or the point-of-sale terminals**, it is inherent that connection to other (third-party) computers could be made through **the same radio frequency communications**, as long as the third party computers have a radio frequency receiving means.

However, the store central computer in Sloane is manifestly part of an intranet system limited to the store's immediate environs and does not satisfy the proper interpretation of "a third party computer" required by appellant's claim 18.

Accordingly, appellant respectfully submits that claims 10, 14-19 and 21-27 are patentable under 35 U.S.C. § 103(a) over Sloane in view of Humble.

Conclusion

The final rejections of claims 1-19 and 21-27 should be reversed, and these claims should be allowed to issue in a patent.

8. CLAIMS APPENDIX:

1. (Previously presented) A system for providing cross-marketing promotional offers to a customer, said system comprising:

at least one product inventory location for holding distinct products and displaying said distinct products to customers wherein at least one said distinct product is associated with at least one electronic tag, and wherein said at least one electronic tag is configured to convey product information;

a smart cart defining a customer-storage area used by a customer to store products while shopping;

at least one electronic tag reading device configured to retrieve information from the at least one electronic tag;

an electronic computing device in communication with said at least one electronic tag reading device and configured to accept, process, store and output said product information;

said electronic computing device further configured to:

(a) use said at least one electronic tag reading device to retrieve product information from an electronic tag associated with a hot-product wherein said hot-product is at least one of (i) a product being examined by a customer; and (ii) a product in a customer-storage-area;

(b) use said product information to determine if a cross-marketing promotional offer is associated with said hot-product;

(c) to notify said customer of a cross-marketing promotional offer determined to be associated with said hot-product; and wherein said promotional offer is one of a real time promotional offer and a near real time promotional offer; and

wherein said smart cart further comprises an item evaluator configured to measure a physical parameter of said hot-product placed in said customer-storage area and to cross reference the measured physical parameter with said product information to verify that the actual hot-product corresponds to the product referenced in said product information.

2. (Original) A system for providing cross-marketing promotional offers to a customer as in claim 1, wherein said cross-marketing promotional offer is triggered by at least two items in said customer-storage-area.

3. (Previously presented) A system for providing cross-marketing promotional offers to a customer as in claim 1, wherein said electronic tag is an RFID (radio frequency identification device) smart tag and said electronic tag reading device is an RFID STR (smart tag reader) device.

4. (Original) A system for providing cross-marketing promotional offers to a customer as in claim 1, wherein said electronic tag reading device is further configured to transmit an electronic tag trigger signal.

5. (Original) A system for providing cross-marketing promotional offers to a customer as in claim 1, wherein said electronic computing device is a central computer.

6. (Original) A system for providing cross-marketing promotional offers to a customer as in claim 5, wherein said central computer is in communication with a customer-interface associated with said customer-storage-area and wherein said

customer-interface is configured to display at least part of said product information received from at least one of said central computer and said electronic tag reading device.

7. (Original) A system for providing cross-marketing promotional offers to a customer as in claim 1, wherein said electronic computing device is a computer comprising a customer-interface associated with said customer-storage-area.

8. (Original) A system for providing cross-marketing promotional offers to a customer as in claim 7, wherein said customer-interface is in communication with a central computer and wherein said customer-interface is further configured to receive a customer request for a desired product and to transfer said customer request to said central computer.

9. (Original) A system for providing cross-marketing promotional offers to a customer as in claim 8, wherein said customer-interface is further configured to receive and display product information from at least one of said electronic tag reading device and said central computer.

10. (Previously presented) A system for providing cross-marketing promotional offers to a customer as in claim 9, wherein said customer-interface further comprises an RFID STR device and wherein said item evaluator further comprises a scale in communication with said customer-interface.

11. (Previously presented) A smart cart comprising:

a customer-storage-area defined in said smart-cart and used by a customer to store products while shopping, wherein said customer-storage-area comprises an item-evaluator;

at least one electronic tag reading device configured to retrieve product information from electronic tags associated with products;

a smart cart computer in communication with said at least one electronic tag reading device and configured to retrieve product information from at least one electronic tag associated with a hot-product wherein said hot-product is at least one of: (a) a product being examined by a customer; or (b) a product in said customer-storage-area;

wherein said smart cart computer is in communication with said item-evaluator;

wherein said smart cart computer is further configured to use said item-evaluator to measure a physical parameter of said hot-product placed in said customer-storage area and to compare said measured physical parameter with a known value to verify that said hot-product corresponds to the product identified in said product information;

wherein said smart cart computer is further configured to communicate with a remote computer and retrieve supplemental-product-information associated with said hot-product using at least part of said product information; and wherein said smart cart computer is further configured to present to said customer at least one member from the group consisting of: (a) at least part of said product information; (b) at least part of said supplemental-product-information; or (c) measured hot-product physical parameter information.

12. (Previously presented) A smart cart as in claim 11, wherein said at least one electronic tag reading device is an RFID (radio frequency identification device) STR (smart tag reader) device configured to receive electronic tag transmissions and to transmit an electronic tag trigger signal upon one of an automated computer request

generated by said remote computer, an automated computer request generated by said smart cart computer and a manual request generated by said customer.

13. (Original) A smart cart as in claim 11, wherein said smart cart computer is further configured to receive real-time cross-marketing promotional offers from said remote computer and present said real-time promotional offers to said customer and wherein said hot-product is a product placed in said customer-storage area.

14. (Previously presented) A smart cart as in claim 11, wherein said supplemental-product-information further comprises expected weight information for said hot-product;

said item-evaluator is a scale;

said physical parameter is weight; and

said smart cart computer is configured to verify that the total-measured-weight of hot-products in said customer-storage-area is within a predefined weight-tolerance of the expected-total-weight for said hot-products.

15. (Original) A smart cart as in claim 14, wherein said smart cart computer is further configured to communicate with a check-out-computer at a point of sale and wherein said smart cart computer transfers to said check-out-computer at least part of the product information related to the hot-product in said customer-storage-area.

16. (Original) A smart cart as in claim 15, wherein at least one of said smart cart computer and said check-out-computer automatically determines the total sales price minus any qualifying cross-marking discounts for said hot-product.

17. (Previously presented) A smart cart as in claim 16, wherein at least one of said smart cart computer or said check-out-computer automatically validates a customer

check-out by verifying that the total-measured-weight for the hot-product in said customer storage area is within a predefined weight-tolerance of the expected-total-weight for said hot-product.

18. (Previously presented) A network enabled smart cart comprising:

a customer storage area defined in said smart cart comprising a scale configured in said customer storage area;

a customer interface;

at least one electronic tag scanning device associated with said customer interface and configured to receive electronic tag transmissions from electronic tags associated with hot-products;

a first computer associated with said customer interface;

wherein said first computer is in communication with said at least one electronic tag scanning device and configured to retrieve product information stored in the electronic tags associated with said hot-products;

a first network operating in accordance with a predetermined protocol;

a second network comprising a plurality of said customer interfaces;

a gateway operatively coupled to said first network and to said second network;

an HTTP server embedded in one of said gateway and said plurality of customer interfaces; and

wherein said first computer is configured to establish a communication connection to a third party computer so that a customer can directly communicate with a third party via said customer interface.

19. (Previously presented) A network enabled smart cart as in claim 18, wherein

said customer interface further comprises at least one of: (a) an LCD (liquid crystal display) display; (b) an audio system for generating and receiving audio messages; (c) a digital camera; (d) a video camera; or (e) a card reader.

20. Cancelled

21. (Previously presented) A network enabled smart cart as in claim 19, wherein said first computer is further configured to execute a Main CMAC (cross-marketing & automatic check-out) routine when a smart cart is present at a point of sale location.

22. (Original) A network enabled smart cart as in claim 19, wherein said at least one electronic tag scanning device and said scale are integrated into the same component.

23. (Original) A network enabled smart cart as in claim 19, wherein said first computer is in communication with a remote computer and wherein said first computer is further configured to use the product information retrieved from the electronic tags associated with said hot-products to retrieve supplemental-product-information from said remote computer.

24. (Previously presented) A network enabled smart cart as in claim 23, wherein said supplemental-product-information includes at least one of the following: (a) hot-product expected-weight information; (b) hot-product pricing information; or (c) promotional offering information associated with the purchase of said hot-product.

25. (Original) A network enabled smart cart as in claim 24, wherein said first computer is in communication with said scale and configured to retrieve measured weight information for said hot-products and compare said measured weight with said expected-weight and issue an alert when said measured weight is not within a

predefined tolerance of said expected weight.

26. (Original) A network enabled smart cart as in claim 25, wherein said first computer is further configured to use said customer interface to present said promotional offering information associated with said hot products to a customer.

27. (Previously presented) A network enabled smart cart as in claim 26, wherein said first computer is further configured to automatically determine the pricing information for said hot products and automatically adjust said pricing information consistent with the requirements of accepted promotional offers.

Claims 28 - 39: Cancelled

9. Evidence Appendix:

None.

10. Related Proceedings Appendix:

Not applicable.

Respectfully submitted,

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